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12
13 UNITED STATES DISTRICT COURT
14 NORTHERN DISTRICT OF CALIFORNIA
15 (SAN FRANCISCO/OAKLAND DIVISION)
16

17 JOHN CREIGHTON, JAMES
18 FITZPATRICK AND WILLIAM GALVIN,
on behalf of themselves and others similarly
19 situated,

20 Plaintiffs,

21 vs.

22 UNISOURCE WORLDWIDE, INC., and
DOES 1 through 50, inclusive,

23 Defendants.
24
25
26
27
28

CASE NO. CV 06-03860 TEH
STIPULATED PROTECTIVE ORDER

The Honorable Thelton E. Henderson

STIPULATED PROTECTIVE ORDER

1 1. PURPOSES AND LIMITATIONS

2 Disclosure and discovery activity in this action are likely to involve production of
 3 confidential, proprietary, or private information for which special protection from public
 4 disclosure and from use for any purpose other than prosecuting this litigation would be warranted.
 5 Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated
 6 Protective Order. The parties acknowledge that this Order does not confer blanket protections on
 7 all disclosures or responses to discovery and that the protection it affords extends only to the
 8 limited information or items that are entitled under the applicable legal principles to treatment as
 9 confidential. The parties further acknowledge, as set forth in Section 10, below, that this
 10 Stipulated Protective Order creates no entitlement to file confidential information under seal;
 11 Civil Local Rule 79-5 sets forth the procedures that must be followed and reflects the standards
 12 that will be applied when a party seeks permission from the court to file material under seal.

13 2. DEFINITIONS

14 2.1 Party: includes Defendants and named Plaintiffs in this action, including
 15 all of officers, directors, employees, consultants, retained experts, and outside counsel (and their
 16 support staff) of defendants and named Plaintiffs.

17 2.2 Disclosure or Discovery Material: all items or information, regardless of
 18 the medium or manner generated, stored, or maintained (including, among other things,
 19 testimony, transcripts, or tangible things) that are produced or generated in disclosures or
 20 responses to discovery in this matter.

21 2.3 "Confidential" Information or Items: information (regardless of how
 22 generated, stored or maintained) or tangible things that qualify for protection under standards
 23 developed under F.R.Civ.P. 26(c).

24 2.4 "Highly Confidential-For Attorney's Eyes Only" Information or Items:
 25 extremely sensitive "Confidential Information or Items" whose disclosure to another Party or
 26 non-party would create a substantial risk of serious injury that could not be avoided by less
 27 restrictive means.
 28

1 2.5 Receiving Party: a Party that receives Disclosure or Discovery Material
2 from a Producing Party.

3 2.6 Producing Party: a Party or non-party that produces Disclosure or
4 Discovery Material in this action.

5 2.7 Designating Party: a Party or non-party that designates information or
6 items that it produces in disclosures or in responses to discovery as "Confidential" or "Highly
7 Confidential - Attorneys' Eyes Only."

8 2.8 Protected Material: any Disclosure or Discovery Material that is
9 designated as "Confidential" or as "Highly Confidential — Attorneys' Eyes Only."

10 2.9 Outside Counsel: attorneys who are not employees of a Party but who are
11 retained to represent or advise a Party in this action.

12 2.10 House Counsel: attorneys who are employees of a Party.

13 2.11 Counsel (without qualifier): Outside Counsel and House Counsel (as well
14 as their support staffs).

15 2.12 Expert: a person with specialized knowledge or experience in a matter
16 pertinent to the litigation who has been retained by a Party or its counsel to serve as an expert
17 witness or as a consultant in this action and who is not a past or a current employee of a Party or
18 of a competitor of a Party's and who, at the time of retention, is not anticipated to become an
19 employee of a Party or a competitor of a Party's. This definition includes a professional jury or
20 trial consultant retained in connection with this litigation.

21 2.13 Professional Vendors: persons or entities that provide litigation support
22 services (e.g., photocopying; videotaping; translating; preparing exhibits or demonstrations;
23 organizing, storing, retrieving data in any form or medium; etc.) and their employees and
24 subcontractors.

25 3. SCOPE

26 a. General

27 The protections conferred by this Stipulation and Order cover not only Protected
28 Material (as defined above), but also any information copied or extracted therefrom, as well as all

1 copies, excerpts, summaries, or compilations thereof, plus testimony, conversations, or
 2 presentations by parties or counsel to or in court or in other settings that might reveal Protected
 3 Material.

4 b. Non-designated materials

5 All produced documents that are not publicly available, whether or not designated
 6 as "confidential" or "highly confidential – attorney's eyes only," shall be used only for purposes
 7 of this litigation and will not be otherwise disseminated.

8 4. DURATION

9 Even after the termination of this litigation, the confidentiality obligations imposed
 10 by this Order shall remain in effect until a Designating Party agrees otherwise in writing or a
 11 court order otherwise directs.

12 5. DESIGNATING PROTECTED MATERIAL

13 5.1 Exercise of Restraint and Care in Designating Material for Protection.

14 Each Party or non-party that designates information or items for protection under
 15 this Order must take care to limit any such designation to specific material that qualifies under the
 16 appropriate standards. A Designating Party must take care to designate for protection only those
 17 parts of material, documents, items, or oral or written communications that qualify — so that
 18 other portions of the material, documents, items, or communications for which protection is not
 19 warranted are not swept unjustifiably within the ambit of this Order.

20 Mass, indiscriminate, or routinized designations are prohibited. Designations that
 21 are shown to be clearly unjustified, or that have been made for an improper purpose (e.g., to
 22 unnecessarily encumber or retard the case development process, or to impose unnecessary
 23 expenses and burdens on other parties), expose the Designating Party to sanctions.

24 If it comes to a Party's or a non-party's attention that information or items that it
 25 designated for protection do not qualify for protection at all, or do not qualify for the level of
 26 protection initially asserted, that Party or non-party must promptly notify all other parties that it is
 27 withdrawing the mistaken designation.
 28

1 5.2 Manner and Timing of Designations. Except as otherwise provided in this
 2 Order (see, e.g., second paragraph of section 5.2(a), below), or as otherwise stipulated or ordered,
 3 material that qualifies for protection under this Order must be clearly so designated before the
 4 material is disclosed or produced.

5 Designation in conformity with this Order requires:

6 (a) for information in documentary form (apart from transcripts of depositions
 7 or other pretrial or trial proceedings), that the Producing Party affix the legend
 8 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEY’S EYES ONLY” on each
 9 page that contains protected material. If only a portion or portions of the material on a page
 10 qualifies for protection, the Producing Party also must clearly identify the protected portion(s)
 11 (e.g., by making appropriate markings in the margins) and must specify, for each portion, the
 12 level of protection being asserted (either “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –
 13 ATTORNEY’S EYES ONLY”).

14 A Party or non-party that makes original documents or materials available for
 15 inspection need not designate them for protection until after the inspecting Party has indicated
 16 which material it would like copied and produced. During the inspection and before the
 17 designation, all of the material made available for inspection shall be deemed “HIGHLY
 18 CONFIDENTIAL - ATTORNEY’S EYES ONLY.” After the inspecting Party has identified the
 19 documents it wants copied and produced, the Producing Party must determine which documents,
 20 or portions thereof, qualify for protection under this Order, then, before producing the specified
 21 documents, the Producing Party must affix the appropriate legend (“CONFIDENTIAL” or
 22 “HIGHLY CONFIDENTIAL - ATTORNEY’S EYES ONLY”) that contains Protected Material.
 23 If only a portion or portions of the material on a page qualifies for protection, the Producing Party
 24 also must clearly identify the protected portion(s) (e.g., by making appropriate markings in the
 25 margins) and must specify, for each portion, the level of protection being asserted (either
 26 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL - ATTORNEY’S EYES ONLY”).

27 (b) for testimony given in deposition or in other pretrial or trial proceedings,
 28 that the Party or non-party offering or sponsoring the testimony identify on the record, before the

close of the deposition, hearing, or other proceeding, all protected testimony, and further specify any portions of the testimony that qualify as "HIGHLY CONFIDENTIAL - ATTORNEY'S EYES ONLY." When it is impractical to identify separately each portion of testimony that is entitled to protection, and when it appears that substantial portions of the testimony may qualify for protection, the Party or non-party that sponsors, offers, or gives the testimony may invoke on the record (before the deposition or proceeding is concluded) a right to have up to 20 days to identify the specific portions of the testimony as to which protection is sought and to specify the level of protection being asserted ("CONFIDENTIAL" or "HIGHLY CONFIDENTIAL - ATTORNEY'S EYES ONLY"). Only those portions of the testimony that are appropriately designated for protection within the 20 days shall be covered by the provisions of this Stipulated Protective Order.

Transcript pages containing Protected Material must be separately bound by the court reporter, who must affix to the top of each such page the legend "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL - ATTORNEY'S EYES ONLY," as instructed by the Party or non-party offering or sponsoring the witness or presenting the testimony.

(c) for information produced in some form other than documentary, and for any other tangible items, that the Producing Party affix in a prominent place on the exterior of the container or containers in which the information or item is stored the legend "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL - ATTORNEY'S EYES ONLY." If only portions of the information or item warrant protection, the Producing Party, to the extent practicable, shall identify the protected portions, specifying whether they qualify as "Confidential" or as "Highly Confidential - Attorney's Eyes Only."

5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to designate qualified information or items as "Confidential" or "Highly Confidential - Attorneys' Eyes Only" does not, standing alone, waive the Designating Party's right to secure protection under this Order for such material. If material is appropriately designated as "Confidential" or "Highly Confidential - Attorneys' Eyes Only" after the material was initially

1 produced, the Receiving Party, on timely notification of the designation, must make reasonable
2 efforts to assure that the material is treated in accordance with the provisions of this Order.

3 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

4 6.1 Timing of Challenges. Unless a prompt challenge to a Designating Party's
5 confidentiality designation is necessary to avoid foreseeable substantial unfairness, unnecessary
6 economic burdens, or a later significant disruption or delay of the litigation, a Party does not
7 waive its right to challenge a confidentiality designation by electing not to mount a challenge
8 promptly after the original designation is disclosed.

9 6.2 Meet and Confer. A Party that elects to initiate a challenge to a
10 Designating Party's confidentiality designation must do so in good faith and must begin the
11 process by conferring directly (in voice to voice dialogue; other forms of communication are not
12 sufficient) with counsel for the Designating Party. In conferring, the challenging Party must
13 explain the basis for its belief that the confidentiality designation was not proper and must give
14 the Designating Party an opportunity to review the designated material, to reconsider the
15 circumstances, and, if no change in designation is offered, to explain the basis for the chosen
16 designation. A challenging Party may proceed to the next stage of the challenge process only if it
17 has engaged in this meet and confer process first.

18 6.3 Judicial Intervention. A Party that elects to press a challenge to a
19 confidentiality designation after considering the justification offered by the Designating Party
20 may file and serve a motion under Civil Local Rule 7 (and in compliance with Civil Local Rule
21 79-5, if applicable) that identifies the challenged material and sets forth in detail the basis for the
22 challenge. Each such motion must be accompanied by a competent declaration that affirms that
23 the movant has complied with the meet and confer requirements imposed in the preceding
24 paragraph and that sets forth with specificity the justification for the confidentiality designation
25 that was given by the Designating Party in the meet and confer dialogue.

26 The burden of persuasion in any such challenge proceeding shall be on the
27 Designating Party. Until the court rules on the challenge, all parties shall continue to afford the
28

1 material in question the level of protection to which it is entitled under the Producing Party's
2 designation.

3 7. ACCESS TO AND USE OF PROTECTED MATERIAL

4 7.1 Basic Principles. A Receiving Party may use Protected Material that is
5 disclosed or produced by another Party or by a non-party in connection with this case only for
6 prosecuting, defending, or attempting to settle this litigation. Such Protected Material may be
7 disclosed only to the categories of persons and under the conditions described in this Order.
8 When the litigation has been terminated, a Receiving Party must comply with the provisions of
9 section 11, below (FINAL DISPOSITION).

10 Protected Material must be stored and maintained by a Receiving Party at a
11 location and in a secure manner that ensures that access is limited to the persons authorized under
12 this Order.

13 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise
14 ordered by the court or permitted in writing by the Designating Party, a Receiving Party may
15 disclose any information or item designated CONFIDENTIAL only to:

16 (a) the Receiving Party's counsel (including House Counsel) in this action, as
17 well as employees of said Counsel to whom it is reasonably necessary to disclose the information
18 for this litigation and who have signed the "Agreement to Be Bound by Protective Order" that is
19 attached hereto as Exhibit A;

20 (b) the officers, directors, and employees of the Receiving Party to whom
21 disclosure is reasonably necessary for this litigation and who have signed the "Agreement to Be
22 Bound by Protective Order" (Exhibit A);

23 (c) experts (as defined in this Order) of the Receiving Party to whom
24 disclosure is reasonably necessary for this litigation and who have signed the "Agreement to Be
25 Bound by Protective Order" (Exhibit A);

26 (d) the Court, an agreed-upon mediator and their personnel;
27
28

(e) court reporters, their staffs, and professional vendors to whom disclosure is reasonably necessary for this litigation and who have signed the "Agreement to Be Bound by Protective Order" (Exhibit A);

(f) during their depositions, witnesses in the action to whom disclosure is reasonably necessary and who have signed the "Agreement to Be Bound by Protective Order" (Exhibit A). Pages of transcribed deposition testimony or exhibits to depositions that reveal Protected Material must be separately bound by the court reporter and may not be disclosed to anyone except as permitted under this Stipulated Protective Order.

(g) the author of the document or the original source of the information.

7.3 Disclosure of "HIGHLY CONFIDENTIAL ATTORNEYS' EYES ONLY" Information or Items. Unless otherwise ordered by the court or permitted in writing by the Designating Party, a Receiving Party may disclose any information or item designated "HIGHLY CONFIDENTIAL -ATTORNEYS' EYES ONLY" only to:

(a) the Receiving Party's counsel (including House Counsel) in this action, as well as paralegals and other employees of said Counsel to whom it is reasonably necessary to disclose the information for this litigation and who have signed the "Agreement to Be Bound by Protective Order" that is attached hereto as Exhibit A;

(b) Experts (as defined in this Order) (1) to whom disclosure is reasonably necessary for this litigation, (2) who have signed the "Agreement to Be Bound by Protective Order" (Exhibit A), and (3) as to whom the procedures set forth in paragraph 7.4, below, have been followed;

(c) the Court, an agreed-upon mediator and their personnel;

(d) court reporters, their staffs, and professional vendors to whom disclosure is reasonably necessary for this litigation and who have signed the "Agreement to Be Bound by Protective Order" (Exhibit A); and

(e) the author of the document or the original source of the information.

7.4 Procedures for Approving Disclosure of "HIGHLY CONFIDENTIAL-ATTORNEYS' EYES ONLY" Information or Items to "Experts"

1 (a) Unless otherwise ordered by the court or agreed in writing by the
2 Designating Party, a Receiving Party that seeks to disclose to an "Expert" (as defined in this
3 Order) any information or item that has been designated "HIGHLY CONFIDENTIAL-
4 ATTORNEYS' EYES ONLY" first must make a written request to the Designating Party that (1)
5 identifies the specific HIGHLY CONFIDENTIAL information that the Receiving Party seeks
6 permission to disclose to the Expert, (2) sets forth the full name of the Expert and the city and
7 state of his or her primary residence, (3) attaches a copy of the Expert's current resume, (4)
8 identifies the Expert's current employer(s), (5) identifies each person or entity from whom the
9 Expert has received compensation for work in his or her areas of expertise or to whom the expert
10 has provided professional services at any time during the preceding five years, and (6) identifies
11 (by name and number of the case, filing date, and location of court) any litigation in connection
12 with which the Expert has provided any professional services during the preceding five years.

13 (b) A Receiving Party that makes a request and provides the information
14 specified in the preceding paragraph may disclose the subject Protected Material to the identified
15 Expert unless, within seven court days of delivering the request, the Receiving Party receives a
16 written objection from the Designating Party. Any such objection must set forth in detail the
17 grounds on which it is based.

18 (c) A Receiving Party that receives a timely written objection must meet and
19 confer with the Designating Party (through direct voice to voice dialogue) to try to resolve the
20 matter by agreement. If no agreement is reached, the Receiving Party seeking to make the
21 disclosure to the Expert may file a motion as provided in Civil Local Rule 7 (and in compliance
22 with Civil Local Rule 79-5, if applicable) seeking permission from the court to do so. Any such
23 motion must describe the circumstances with specificity, set forth in detail the reasons for which
24 the disclosure to the Expert is reasonably necessary, assess the risk of harm that the disclosure
25 would entail and suggest any additional means that might be used to reduce that risk. In addition,
26 any such motion must be accompanied by a competent declaration in which the movant describes
27 the parties' efforts to resolve the matter by agreement (i.e., the extent and the content of the meet
28

1 and confer discussions) and sets forth the reasons advanced by the Designating Party for its
2 refusal to approve the disclosure.

3 In any such proceeding the Party opposing disclosure to the Expert shall bear the
4 burden of proving that the risk of harm that the disclosure would entail (under the safeguards
5 proposed) outweighs the Receiving Party's need to disclose the Protected Material to its Expert.

6 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN
7 OTHER LITIGATION.

8 If a Receiving Party is served with a subpoena or an order issued in other litigation
9 that would compel disclosure of any information or items designated in this action as
10 "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY," the
11 Receiving Party must so notify the Designating Party, in writing (by fax, if possible) immediately
12 and in no event more than three court days after receiving the subpoena or order. Such
13 notification must include a copy of the subpoena or court order.

14 The Receiving Party also must immediately inform in writing the Party who
15 caused the subpoena or order to issue in the other litigation that some or all the material covered
16 by the subpoena or order is the subject of this Protective Order. In addition, the Receiving Party
17 must deliver a copy of this Stipulated Protective Order promptly to the Party in the other action
18 that caused the subpoena or order to issue.

19 The purpose of imposing these duties is to alert the interested parties to the
20 existence of this Protective Order and to afford the Designating Party in this case an opportunity
21 to try to protect its confidentiality interests in the court from which the subpoena or order issued.
22 The Designating Party shall bear the burdens and the expenses of seeking protection in that court
23 of its confidential material - and nothing in these provisions should be construed as authorizing or
24 encouraging a Receiving Party in this action to disobey a lawful directive from another court.

25 9. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

26 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
27 Protected Material to any person or in any circumstance not authorized under this Stipulated
28 Protective Order, the Receiving Party must immediately (a) notify in writing the Designating

1 Party of the unauthorized disclosures, (b) use its best efforts to retrieve all copies of the Protected
2 Material, (c) inform the person or persons to whom unauthorized disclosures were made of all the
3 terms of this Order, and (d) request such person or persons to execute the "Acknowledgment and
4 Agreement to Be Bound" that is attached hereto as Exhibit A.

5 10. FILING PROTECTED MATERIAL. Without written permission from the
6 Designating Party or a court order secured after appropriate notice to all interested persons, a
7 Receiving Party may not file in the public record in this action any Protected Material. A
8 Receiving Party that seeks to file under seal any Protected Material must comply with Civil Local
9 Rule 79-5.

10 11. FINAL DISPOSITION. Unless otherwise ordered or agreed in writing by the
11 Producing Party, within sixty days after the final termination of this action, each Receiving Party
12 must return all Protected Material to the Producing Party. As used in this subdivision, "all
13 Protected Material" includes all copies, abstracts, compilations, summaries or any other form of
14 reproducing or capturing any of the Protected Material, including any electronic media. With
15 permission in writing from the Designating Party, the Receiving Party may destroy some or all of
16 the Protected Material instead of returning it. Whether the Protected Material is returned or
17 destroyed, the Receiving Party must submit a written certification to the Producing Party (and, if
18 not the same person or entity, to the Designating Party) by the sixty day deadline that identifies
19 (by category, where appropriate) all the Protected Material that was returned or destroyed and that
20 affirms that the Receiving Party has not retained any copies, abstracts, compilations, summaries
21 or other forms of reproducing or capturing any of the Protected Material. Notwithstanding this
22 provision, Counsel are entitled to retain an archival copy of all pleadings, motion papers,
23 transcripts, legal memoranda, correspondence or attorney work product, even if such materials
24 contain Protected Material. Any such archival copies that contain or constitute Protected Material
25 remain subject to this Protective Order as set forth in Section 4 (DURATION), above.

26 12. MISCELLANEOUS

27 12.1 Right to Further Relief. Nothing in this Order abridges the right of any
28 person to seek its modification by the Court in the future.

12.2 Right to Assert Other Objections. By stipulating to the entry of this Protective Order no Party waives any right it otherwise would have to object to disclosing or producing any information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no Party waives any right to object on any ground to use in evidence of any of the material covered by this Protective Order.

IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

DATED: February 22, 2006

FINE, BOGGS & PERKINS LLP

By: 
NED A. FINE

Attorneys for Plaintiffs
JOHN CREIGHTON, JAMES FITZPATRICK, and
WILLIAM GALVIN

DATED: February 22, 2006

MUNGER, TOLLES & OLSON LLP

By: 
REBECCA GOSE LYNCH

Attorneys for Defendant
UNISOURCE WORLDWIDE, INC.

PURSUANT TO STIPULATION, IT IS SO ORDERED.

DATED: 02/22/07

The Honorable Thelton Henderson
United States District Judge

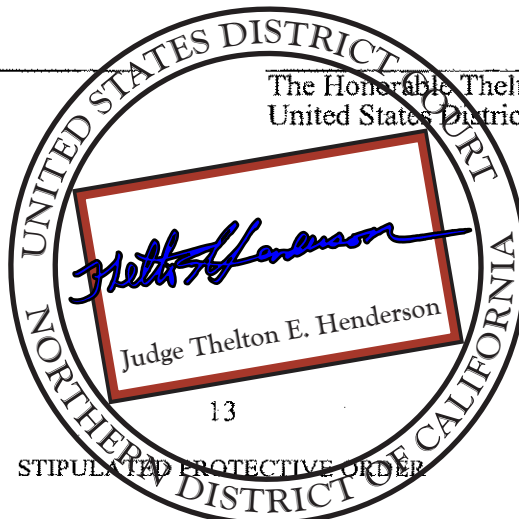


EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of _____ [print or type full address], declare under penalty of perjury that I have read in its entirety and understand the Stipulated Protective Order that was issued by the United States District Court for the Northern District of California on [date] in the case of *Creighton, et. al. v. Unisource Worldwide, Inc.*, Case No. CV 06-03860 TEH. I agree to comply with and to be bound by all the terms of this Stipulated Protective Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Stipulated Protective Order to any person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the Northern District of California for the purpose of enforcing the terms of this Stipulated Protective Order, even if such enforcement proceedings occur after termination of this action.

I hereby appoint _____ [print or type full name] of _____ [print or type full address and telephone number] as my California agent for service of process in connection with this action or any proceedings related to enforcement of this Stipulated Protective Order.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

[printed name]

Signature: _____ [signature]

STIPULATED PROTECTIVE ORDER